



House of Representatives

General Assembly

File No. 8

January Session, 2003

House Bill No. 5811

House of Representatives, March 4, 2003

The Committee on General Law reported through REP. FOX of the 144th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING INTRODUCTORY RATE OFFERS AND AUTOMATIC RENEWAL OF CONSUMER CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-126b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) No person, firm, partnership, association or corporation, or
4 agent or employee thereof, shall, in any manner, or by any means,
5 offer for sale goods, wares or merchandise, where the offer includes
6 the voluntary and unsolicited sending of goods, wares or merchandise
7 not actually ordered or requested by the recipient, either orally or in
8 writing. The receipt of any such unsolicited goods, wares or
9 merchandise shall for all purposes be deemed an unconditional gift to
10 the recipient who may use or dispose of the same in any manner [he]
11 such recipient sees fit without any obligation on [his] such recipient's
12 part to the sender.

13 (b) Any person, firm, partnership, association or corporation that
14 sells or offers to sell any products or services pursuant to a trial offer,
15 or at an introductory rate that will change at the end of the
16 introductory rate period, shall provide the recipient of such products
17 or services with clear and conspicuous written notice that the recipient
18 may cancel such products or services upon the expiration of such trial
19 offer or introductory rate period. Such notice shall include the
20 procedure for such cancellation and shall be provided with any written
21 promotional material for such products or services furnished to the
22 recipient before the start of the trial offer or the introductory rate
23 period or with the initial delivery of such products or services to the
24 recipient. Any such products or services furnished to the recipient after
25 the expiration of such trial offer or introductory rate period, where
26 such trial offer or introductory rate period is cancelled or not otherwise
27 renewed or continued by the recipient, shall be deemed an
28 unconditional gift under subsection (a) of this section. The provisions
29 of this subsection shall not apply to (1) any trial offer or introductory
30 rate offer provided by a public service company, as defined in section
31 16-1, an affiliate or subsidiary of such public service company, or any
32 certified telecommunications provider, as defined in section 16-1, to
33 any consumer with whom such public service company, affiliate or
34 subsidiary, or certified telecommunications provider has an
35 established and ongoing business relationship, provided such public
36 service company, affiliate or subsidiary, or certified
37 telecommunications provider shall inform such consumer of the
38 procedure to cancel such trial offer or to cancel after the expiration of
39 the introductory rate period, and (2) any transaction involving the use
40 of a negative option plan that is governed by 16 CFR Part 425.

41 (c) Any person, firm, partnership, association or corporation that
42 sells or offers to sell any products or services for a specified period of
43 time pursuant to a written contract that contains a provision for
44 automatic renewal of the contract at the end of the period of time
45 specified in the contract shall provide the recipient of such products or
46 services with clear and conspicuous written notice, at least fifteen days
47 but no later than thirty days prior to the end of the specified period of

48 time, that the recipient may cancel such contract. Such notice shall
49 include the procedure for such cancellation. If such contract is of less
50 than fifteen days in duration, said contract shall contain a clear and
51 conspicuous written notice of the right to cancel such contract and the
52 procedure for cancellation. If such notice is not provided to the
53 recipient in accordance with the provisions of this subsection, any such
54 products or services furnished to the recipient after the end of the
55 period of time specified in the contract shall be deemed an
56 unconditional gift under subsection (a) of this section. Nothing in this
57 subsection shall be construed to apply to a health club contract subject
58 to the provisions of section 21a-219.

59 [(c)] (d) A violation of any provision of this section shall be deemed
60 an unfair or deceptive trade practice under subsection (a) of section 42-
61 110b.

This act shall take effect as follows:	
Section 1	October 1, 2003

GL *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Attorney General	GF - Potential Revenue Gain	Greater than 100,000	Greater than 100,000
Consumer Protection, Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes disclosure of cancellation procedures pertaining to introductory rate offers and to automatic contract renewals. A violation of the bill's provision is deemed to be a CUTPA (Connecticut Unfair Trade Practices Act) violation.

Revenues

Since 1) the DCP anticipates very few cases, if any, and 2) and since the DCP resolves many of its cases through the restitution process, the revenue impact from DCP settlement collections is anticipated to be minimal.

This bill will facilitate the Attorney General's ability to litigate cases involving the disclosure of cancellation procedures relating to introductory rate offers or automatic contract renewals. Depending upon the number and nature of future violations, its passage could result in a significant annual revenue gain to the General Fund.

The Attorney General is currently investigating several companies that have allegedly deceived consumers into spending thousands of dollars on unwanted home alarm services through automatic renewals

of their contracts. The bill makes it more likely that these activities would result in consumer restitution and concurrent revenue to the state from fees and costs related to potential future litigation.

Cost

This bill could result in new inquiries and complaints filed with the Department of Consumer Protection (DCP), and the Office of the Attorney General, and could potentially result in a workload increase which is anticipated to be minimal. Therefore, additional resources would not be necessary for either of the two agencies.

PA 98-109, "An Act Concerning Trial Offers and Magazine Subscription Offers" placed similar requirements concerning trial offers. To date, the DCP has not charged anyone under the provisions of current law.

Further Explanation: Connecticut Unfair Trade Practices Act (CUTPA)

Department of Consumer Protection

As stated above, a violation of the provisions of this bill is deemed to be an unfair trade practice. The Department of Consumer Protection has primary jurisdiction of CUTPA cases, and, thus, handles most of these cases administratively. Under the Unfair Trade Practices Act, the DCP has four methods for resolving complaints. These are as follows: 1) mediation, 2) voluntary compliance, 3) administrative hearings, or 4) forwarding the complaint to the Attorney General's office for litigation. Currently, the DCP handles approximately 12,000 written complaints annually many of which contain CUTPA issues. Many cases are resolved by granting restitution awards to the consumer. However, depending on the specifics of the case a fiduciary agreement may be reached. In such cases, a settlement is collected. Since the department does not track the revenue deposited into the General Fund by type, the exact revenue gain from this source is unknown.

Office of the Attorney General

The Office of the Attorney General is charged with: 1) litigating cases referred to it by the DCP, 2) enforcing orders issued by the DCP, and 3) defending the DCP in any administrative appeals. Resources and staff time vary depending on the complexity of each case.

In accordance with the Unfair Trade Practices Act, courts may award actual and punitive damages, costs, and reasonable attorneys fees. It may also impose civil penalties of not more than \$5,000 for each violation and \$25,000 for a violation of a restraining order. Fees and recovered court costs related to unfair trade practices cases are deposited in the General Fund. The amounts deposited vary according to the nature of the case; however, they can be significant. For example, recent cases involving misleading and deceptive marketing as well as improper billing resulted in payment to the state ranging from \$125,000 to \$1.1 million.¹ It is worthwhile to note, however, that most cases are resolved through one of the processes mentioned above and not through the court system.

¹ In each of the last three fiscal years, the Attorney General has generated in excess of \$2 million in General Fund revenue from fees, costs and penalties related to consumer protection issues including CUTPA cases.

OLR Bill Analysis

HB 5811

**AN ACT CONCERNING INTRODUCTORY RATE OFFERS AND
AUTOMATIC RENEWAL OF CONSUMER CONTRACTS****SUMMARY:**

This bill sets disclosure requirements for sales made (1) at an introductory rate and (2) under a contract including an automatic renewal clause.

A violation of the bill's requirements is deemed to be an unfair trade practice.

EFFECTIVE DATE: October 1, 2003

OFFERS MADE AT AN INTRODUCTORY RATE

The bill requires anyone who sells or offers to sell goods or services at an introductory rate that will change at the end of the introductory period to provide a clear and conspicuous written notice informing the purchaser that he can cancel at the end of the introductory period. The notice must include the cancellation procedure and be provided with (1) the initial delivery or (2) any written promotional material provided before the start of the introductory period. The law already establishes the same requirement for anyone selling pursuant to a trial offer. Goods or services provided after the end of an introductory period that has been cancelled are deemed to be an unconditional gift.

The bill exempts transactions involving negative option plans governed by federal regulations. It exempts introductory rate offers by public service companies, their affiliates and subsidiaries, and intrastate communications providers that have an established and ongoing relationship with a consumer, but requires these companies to inform a purchaser of a means to cancel.

CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS

The bill requires anyone who sells or offers to sell goods or services for a specified time period under a written contract that includes an

automatic renewal provision to provide a clear and conspicuous written notice stating that the purchaser can cancel the contract at the end of the term. The notice must include the cancellation procedure and be provided between 15 and 30 days before the scheduled end of the contract. Any contract for a term of less than 15 days must include a clear and conspicuous notice of the right to cancel and the cancellation procedure.

If the notice of the right to cancel an automatic renewal contract is not provided in accordance with the bill, any goods or services provided to the purchaser after the scheduled end of the contract are deemed to be an unconditional gift.

The bill exempts health club contracts subject to the law governing health club contracts from its notice of automatic renewal provisions.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Negative Option Plans

Federal regulations require negative option sellers to (1) clearly and conspicuously disclose the material terms of the plan in promotional material and (2) mail announcements identifying the merchandise in time for the subscriber to reject the selection. Failure to do so is an unfair trade practice. Federal regulations specify the material terms that must be disclosed and require the announcements to clearly identify the merchandise and rejection procedure (16 CFR § 425.1).

COMMITTEE ACTION

General Law Committee

Joint Favorable Report

Yea 17 Nay 2